

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

ROBERT L. MACKEY,

Petitioner,

Case No. 3:12-cv-073

-vs-

District Judge Thomas M. Rose
Magistrate Judge Michael R. Merz

MICHAEL SHEETS, Warden,

Respondent.

**ORDER WITHDRAWING REPORT AND RECOMMENDATIONS AND REQUIRING
ANSWER**

This habeas corpus case is before the Court on Petitioner's Objections (Doc. No. 4) to the Magistrate Judge's Report and Recommendations (Doc. No. 3). As permitted by Fed. R. Civ. P. 72 and requested by the Magistrate Judge, the Warden has filed a Response to those Objections (Doc. No. 7). District Judge Rose has returned to the matter to the Magistrate Judge for further analysis and recommendations (Recommittal Order, Doc. No. 8).

Having considered the additional filings by the parties, the Magistrate Judge believes a decision on the present pleadings and record would be imprudent. Accordingly, the Report and Recommendations are WITHDRAWN.

Respondent shall, not later than June 1, 2012, file an answer conforming to the requirements of Rule 5 of the Rules Governing §2254 Cases. Specifically, said answer shall respond to each allegation made in the Petition, raise any affirmative defense relied on by Respondent, and state whether, from Respondent's perspective, any claim in the Petition is barred by a failure to exhaust state remedies, a procedural bar, non-retroactivity, or a statute of

limitations. Respondent may incorporate by reference its Response to the Objections, but must set forth any affirmative defenses it wishes the Court to consider (See reservation of rights at PageID 103.) The answer shall be accompanied by those portions of the state court record needed to adjudicate this case if there are any in addition to the Exhibits to the Response. Petitioner may, not later than twenty-one days after the answer is filed, file and serve a reply to the answer.

May 7, 2012.

s/ **Michael R. Merz**
United States Magistrate Judge